IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3481 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMJI KUDARBHAI VANKAR

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 3481 of 1999

MR RK MISHRA for Petitioner No. 1

MR PD BHATE, AGP for Respondent No. 1

MR PRABHAKAR UPADYAY for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/04/2004

ORAL JUDGEMENT

1. In this petition the petitioner has challenged the order of termination of his service by the respondents dated 30th March, 1999, which came to be served upon him on 23rd April, 1999. He has prayed for quashing the said order and also to direct the respondents to reinstate him on his original post together with all the incidental benefits and to pay him the full back wages.

2. The brief facts as transpire from the petition can be stated as under :-

2.1. The petitioner was initially appointed as a Watchman on temporary basis with effect from 1st February, 1979. He was being paid the daily wage. He continued to work on daily wage basis till September 1992 when he was made permanent in post of Watchman. According to the petitioner he had all throughout discharged his service sincerely and diligently. However, the respondent by order dated 30th March, 1999 dismissed him from the service. Before that, on the very date, he was also given a final notice wherein the acts of misconduct alleged to have been committed by him were described. The said final notice has been annexed to the petition as Annexure-A. It runs into about 9 typed pages and contains 11 paras. describing various allegations that have been made against the petitioner.

3. Mr. R.K. Mishra, learned advocate appearing for the petitioner has drawn my attention to the said notice and has contended that looking to the allegations that have been made in the notice, it is very obvious that the termination of service is not a termination simpliciter but it is essentially a penal order. In other words, according to him, since the impugned order is punitive in nature, the respondent was required to follow the due procedure prescribed under the rules and regulations meant for Agricultural Produce Market Committee Employees Service and Recruitment Rules (hereinafter referred to as 'the Rules'). It is, therefore, submitted by Mr. Mishra that the order is bad in law and it is required to be quashed and set aside.

3.1. As against that, Mr. Prabhakar Upadhyay, learned advocate appearing for the respondent no. 2 has submitted that considering the attitude and behaviour of the petitioner the respondent was compelled to relieve petitioner from service immediately. He has further submitted that looking to the language of impugned order, it is termination simpliciter where no procedure is required to be followed.

4. Having gone through the record of the petition and in particular the final notice as well as the impugned order, it becomes very clear that in the notice various allegations have been made against the petitioner. It has been alleged that his performance of the duty was not satisfactory, that he was negligent in discharge of his duty, that he off and on had been putting the respondent in difficulty by his unruly behaviour and also caused harassment to the co-employees; that instead of keeping watch he went to the weigh bridge room and slept till next morning and during his absence from duty the burglars had committed theft in the office, that he had committed breach of the conditions of the service, that he threatened the officers and others to prosecute them under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, etc. It may also be noted that in sub-para. (3) of para. 11, which is subdivided into four sub-paras., it has been clearly stated that considering the fact that because of his unruly behaviour the co-employees were not able to discharge duty fearlessly and that he was also causing feeling of insecurity in the minds of the respondent as well as its employees, in accordance with the provisions of the standing orders, he was required to be relieved from service without any delay and without affording any opportunity to defend himself.

4.1. It is pertinent to note that the dismissal order is also of the same date i.e. 30th March, 1999. It says that with the service of dismissal order on him the petitioner was intimated that he has been relieved from service with effect from 30th March, 1999. The endorsement below the said order shows that it was received by the petitioner on 23rd April, 1999. Thus, there is no doubt in my mind that the petitioner was never given any opportunity to defend the charges levelled against him. It is very clear that in the final notice at Annexure-A there are various allegations made against the petitioner and some of them are of very serious nature. The respondent has not given any opportunity to the petitioner to enable him to explain or controvert those allegations. It may also be noted that the order which is passed as a consequence thereof, is purely punitive in nature. Apart from the rules referred to above, when such penal order is passed against any employee, the minimum that can be done by the employer is to grant him opportunity of hearing. Obviously that has not been done here. Not only that but in the notice itself the respondent has stated that considering the

nature of allegations made in the notice he was required to be relieved from service at the earliest, for which he was not required to give any chance of hearing or to defend his interest. This is very strange, more particularly when the Agricultural Produce Market Committee has framed rules which not only deal with the recruitment of the employees, but they also deal with the procedure for holding inquiry, service of charge-sheet, imposition of penalty, etc. When all these provisions are there it was incumbent upon the respondent to follow the said procedure and also comply with the principles of natural justice. Admittedly that has not been done. There is, therefore, no difficulty for this Court to hold that the impugned order is violative of principles of natural justice and also against the provisions of the rules and hence bad in law. The same is required to be quashed and set aside. It is, therefore, ordered that the impugned order dated 30th March, 1999 is hereby quashed and set aside and the petitioner is ordered to be reinstated on his original post with continuity in service.

5. The next question which is required to be decided is whether the petitioner in such circumstances is entitled to receive full back wages. In this petition order dated 30th March, 1999 has been challenged. It may be noted here that against the impugned order appeal is provided for by the rules and in particular rule no. 26. However, the petitioner has thought it fit to approach this Court under Article 226 of the Constitution of India to challenge the impugned order. This Court while admitting the matter passed order dated 7th May, 1999 making the rule returnable on 8th July, 1999. Since the matter has already been admitted, it is not desirable now to dismiss it on the ground of availability of alternative efficacious remedy to the petitioner. However, so far the question of award of back wages is concerned, it is clear that when the petitioner had approached this Court immediately after the order of dismissal was passed against him and when this Court had afforded to him an opportunity of early hearing by fixing the matter for final hearing on 8th July, 1999 itself, it was for the petitioner to get the matter heard finally. Unfortunately that has not been done and the same is heard finally today. The respondents, therefore, cannot be saddled with the liability to pay the back wages to the fullest extent. However, the fact remains that the petitioner had to remain out of job because of the high-handed and arbitrary decision of the respondents and naturally when he himself was willing to work and when he was prevented from doing the work by the respondent, he

becomes entitled to receive back wages to the extent of 30% together with all other incidental benefits.

6. In view of the aforesaid, this petition is partly allowed. The respondents are directed to reinstate the petitioner on his original post with continuity of service, all other incidental benefits and payment of 30% back wages. Rule made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.